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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Revision of Part 22 and Part 90 of the )  
Commission's Rules to Facilitate Future )  
Development of Paging Systems )

WT Docket No. 96-18

APR - 2 1996<sup>1</sup>

Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

PP Docket No. 93-253

TO: The Commission

**REPLY COMMENTS OF AMERITECH MOBILE SERVICES, INC.  
ON MARKET AREA LICENSING PROPOSAL**

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## SUMMARY

Ameritech Mobile Services, Inc. (Ameritech) hereby submits its reply comments on the market area licensing proposal contained in the Commission's February 9, 1996 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. The record establishes that the Major Trading Area (MTA) based market area licensing scheme will be difficult to implement, and that the costs associated with the proposal will far outweigh the benefits. The overwhelming majority of carriers commenting on the proposal are against MTA-based auctions. Paging systems have grown in response to customer demand. Attempting to force the licensing process into a system designed for awarding unlicensed spectrum will only result in disruption of existing services, and require construction of transmitters where there is no demand, in order to meet the buildout requirement.

Various commentors agree with Ameritech's proposal for an alternative approach, which will allow licensees to self-define their market areas based on existing facilities, thereby gaining the benefits of flexible licensing while avoiding the disruption of imposing an MTA auction on the industry. Mutually exclusive expansion applications could be resolved using site-specific oral or telephonic auctions. The commentors overwhelmingly agree that, if market area licensing is adopted, incumbents must be allowed to expand system coverage. Many agree with the proposal that incumbents could install transmitters within 40 miles of existing sites, and/or fill in "pockets" of unserved areas which are entirely or mostly surrounded by the incumbent's system.

There is unanimous agreement that 900 MHz licensees must be accorded their current interference protection. If the new service and interference contour formulae are

adopted, existing services will receive interference where their customers currently are able to receive pages. This loss of service to existing subscribers would not serve the public interest. Indeed, the record establishes that such reduction of interference protection may constitute a "taking" under the Fifth Amendment.

There is also substantial agreement in the record that market areas which are already heavily licensed should be exempt from auctions. While there are various proposals for the exemption benchmarks, all of these proposals have enough common ground for the Commission to craft an adequate exception.

Most commentators agree that auction winners should not be allowed to meet their buildout requirement by showing "substantial service." If adequate expansion rights are not adopted for incumbents, Ameritech believes that an exception would be warranted if the winner is already operating on the frequency within the market area.

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Implementation of Section 309(j)	)	PP Docket No. 93-253
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**REPLY COMMENTS OF AMERITECH MOBILE SERVICES, INC.  
ON MARKET AREA LICENSING PROPOSAL**

Ameritech Mobile Services, Inc. (Ameritech) hereby submits its reply comments on the market area licensing proposal contained in the Commission's February 9, 1996 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. As discussed below, the record demonstrates that the Commission's Major Trading Area (MTA) based market area licensing proposal is not appropriate for the paging industry and would not serve the public interest. Various commentators agree with Ameritech's proposed alternative approach of allowing licensees to self-define their market areas based on existing facilities. Moreover, there is overwhelming concurrence that 900 MHz licensees must retain their current interference protection; and that, if auctions are held, market areas which are already substantially licensed to a single carrier should be exempt.

**I. The Record Demonstrates that Market Area Auctions Should Not Be Applied to Paging Licensing.**

The overwhelming majority of commentors in this proceeding agree with Ameritech that the MTA-based auction scheme should not be applied to the licensing of paging frequencies.<sup>1</sup> The only parties supporting such auctions are the Personal Communications Industry Association (PCIA) and ten other commentors, made up almost exclusively of very large carriers that either have nationwide paging channels (and thus are exempt from auctions) or are well positioned for auctions. See Attachment A. However, the issue was not divided based on the size of the carrier. Several large, publicly traded carriers, including MobileMedia Communications, Inc. (MobileMedia), Metrocall, and Teletouch Licenses, Inc. (Teletouch), join Ameritech in opposing Major Trading Area auctions. The dozens of small and mid-sized carriers likewise opposing such auctions create an industry consensus.<sup>2</sup> Most commentors agree that imposing MTA auctions on an industry which has developed without geographic restrictions will only disrupt existing services and thereby harm the public subscribers of these services. Therefore, the Commission should alter its proposal to utilize auctions on a site-specific basis, rather than artificially creating mutual exclusivity. Bearing in mind its own goal

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<sup>1</sup> See Attachment A hereto. It appears from the record that 41 sets of comments were filed, on behalf of approximately 57 carriers, opposing the MTA auction proposal. Of these, a handful of carriers (such as Metrocall, Inc. (Metrocall), Rule Radiophone Service and Huffman Communications) suggest smaller market areas, such as Basic Trading Area (BTAs) or Economic Areas (EAs). However, the vast majority simply oppose the market area auction proposal altogether. In addition, rural telephone companies (such as Nucla-Naturita Telephone Company) and trade associations (such as the United States Telephone Association) are on record as opposing auctions for Basic Exchange Telecommunications Radio Service (BETRS) channels.

<sup>2</sup> While PCIA performs several valuable functions for the paging industry, the record shows that PCIA's views on this particular issue are not representative of the industry.

of designing its rules "so that competitive success is dictated by the marketplace,"<sup>3</sup> the Commission should refrain from imposing license areas that will require coverage based on regulation, rather than actual market demand. See, e.g., Comments of MobileMedia at p. 20. ("[T]he marketplace does not demand wide-area coverage for all paging services."); Comments of Mobilefone Services, Inc. at p. 10 (Under market area licensing, "service must be provided to locations solely to meet numerical buildout goals rather than to satisfy marketplace demands for service.").

In its Comments, Ameritech suggested that the Commission allow incumbent carriers to "self-define" their market area, based on existing coverage and those areas where no other carrier could make reasonable use of the frequency. Transmitters could be implemented within this market area, without prior approval. Various commentators suggested licensing approaches consistent with this idea. Thus, ProNet, Inc. (ProNet) suggested that areas of coverage which are lost by an incumbent should not automatically revert to the market area licensee, if these areas are internal to the incumbent's composite system contour. Comments of ProNet at p. 12. Moreover, ProNet advocates that incumbents be allowed to expand beyond their composite interference contours where the existing contours "are configured so as to preclude coverage by the geographic licensee (without encroaching on the incumbents existing facilities.") *Id.* The Comments of Sunbelt Transmissions Corporation and Snider Communications Corporation (at p. 3) suggest that incumbent licensees be allowed to aggregate their existing coverage to create a self-defined market area. By allowing such self-defined market areas, the Commission could significantly reduce the application backlog without the disruption of MTA auctions.

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<sup>3</sup> NPRM at ¶2.

The Federal Trade Commission (FTC) has submitted comments which argue that market area auctions should be adopted for all paging bands, because the auction scheme would help to stop consumer fraud. In particular, the FTC indicates that consumers are duped into filing paging applications with the belief that the resulting licenses can be sold without any obligation to construct or serve the public. FTC Comments at pp. 4-5. While Ameritech is certainly in favor of reducing consumer fraud, it is respectfully submitted that this problem will not be solved by the auction scheme; and in any event, this goal does not justify disrupting a multi-billion dollar industry, thereby harming the economy and consumers of paging services alike. Ameritech notes that the apparent presence of "application mills" in the paging industry on any significant scale is relatively recent. Large numbers of applications filed in the name of individuals did not begin appearing on public notice until mid- to late-1994. For the previous forty years, applications have been largely filed only by bona fide carriers, which now occupy most available channels.

While the auction scheme may help to deter the filing of individual applications by duped consumers, experience shows that it will not stop consumer fraud. In the Interactive Video and Data Service (IVDS) auction, it would appear that a number of bidders had little understanding of what they were bidding millions of dollars on, and many of these winning bidders subsequently balked at paying the bid price. In the Personal Communications Service (PCS) auctions, certain bidders appear to be organized from the same pool individuals and small businesses that participated in many of the cellular lotteries. While Ameritech does not have any reason to question the bona fides of these applicants, it would appear that the application mills may have little difficulty adjusting to the auction format by similarly pooling the resources of consumers.



Rather than disrupting a well established industry by imposing a licensing mechanism which will probably have little effect on fraud, the Commission should rely on other measures to combat this problem: For example, the Commission can print bold, large type warnings above the signature line of its application forms, alerting consumers to the dangers of fraud and their responsibility to construct and operate licensed stations; the Commission can also strictly enforce its construction requirements, which will result in well publicized warnings to consumers in investment periodicals and other media sources;<sup>4</sup> and finally, the Commission can work with the FTC to more widely publicize such consumer fraud, as it has done previously in connection with fraudulent licensing in the Specialized Mobile Radio Service. Imposing auctions on existing carriers (many of which are small businesses) that have not completed their buildout, will only work an unfair hardship on their employees and customers. This result will be far worse than any harm to "duped" investors.

The Commission's proposal to dismiss all mutually exclusive applications, as part of the market area licensing scheme, appears to violate the Congressional intent underlying the Commission's auction authority. In their February 9, 1996 letter to Chairman Hundt of the Commission (copy attached), Senators Larry Pressler and Thomas Daschle warned the Commission that its retroactive dismissal of mutually exclusive 38 GHz applications would exceed its statutory authority. The Senators addressed this issue as follows:

By virtue of either completing the application process or amending already submitted applications to eliminate mutual exclusivity concerns, applicants have in essence established a fairly reasonable expectation that they would

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<sup>4</sup> In its Public Notice issued March 27, 1996 (Report No. NCS-96-21-A), the Commission announced the termination of dozens of grants made to individuals, for apparent failure to file the required notification of construction.

not be subjected to the competitive bidding process. . . . It therefore seems anomalous to the clearly expressed intent of Congress within the [1993 Budget] Act that applicants who have completed the application process would subsequently be exposed to having to compete for the spectrum in auctions.

The Commission points to its proposal to retroactively apply auctions to 38 GHz applications (which had a similar retroactive effect) as a model for imposing the same regime on paging applications. NPRM at ¶ 139. Its proposal to dismiss mutually exclusive paging applications suffers the same infirmity identified by Senators Pressler and Daschle. Paging applicants who have gone through the application process should be allowed to amend their applications to resolve mutual exclusivity, or should be entitled to have their applications processed as a site-specific proposal, if they choose not to amend. Ameritech and several other commentors do not object to site-specific auctions to resolve mutual exclusivity. See, e.g., Comments of MobileMedia at pp. 13-14; Comments of the Paging Coalition at p. 5. However, the outright dismissal of these applications for the purpose of creating more auctionable territory violates both the express restriction of Section 309(j)(7) against designing rules for revenue purposes, and the Congressional intent evidenced in the Pressler/Daschle letter.

## **II. If Auctions Are Adopted, the Record Demonstrates that There Should Be an Exception for Substantially Licensed Market Areas.**

In its March 18, 1996 Comments (at p. 13), Ameritech indicated that if the Commission adopts a market area licensing scheme, it should exempt from auctions any market area where 70 percent of the population is within an existing licensee's interference contours. The vast majority of commentors suggest a similar exception: PCIA, MobileMedia and Airtouch advocate an exemption if 70 percent of the market area population is "covered" by an existing licensee; Paging Network, Inc. (PageNet)

advocates a similar exemption for 66 percent population coverage; Source One Wireless, Inc. (Source One) and Paging Partners Corporation urge an exemption if 70 percent of the geographic area is covered; A+ Communications, Inc. (APC) advocates an exemption if 70 percent or more of the population is covered by an incumbent carrier or carriers who have formed a consortium for market area licensing purposes; and Metrocall suggests an exemption where an incumbent provides "substantial service" within the market area.<sup>5</sup> Therefore, the Commission should adopt an exemption which will recognize that it makes no sense to auction a market area that is already substantially licensed to a single carrier. Any competing bids made in such circumstances are likely to be submitted by competitors (for nuisance value) or speculators.

Ameritech believes that its suggestion (70% of the population within interference contours) is the optimum approach, since the population within the interference contour of an incumbent likely cannot be served by the auction winner, given the winner's obligation to afford co-channel protection to the incumbent. Therefore, for all intents and purposes, this portion of the population should be discounted in determining the auctionability of a market area. A standard which requires coverage of 66-70 percent of the population within an incumbent's reliable service area contours will likely apply only to situations where upwards of 90 percent of the population is unavailable to the auction winner, because this portion of the population falls within the co-channel protection area. In such instances, no exception is required, since it may be impossible to find a competing bidder. Ameritech's approach recognizes the need to afford incumbents a reasonable opportunity to expand.

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<sup>5</sup> See March 18, 1996 Comments of PCIA at pp. 28-29; MobileMedia at p. 21; Airtouch at p. 40-41; PageNet at pp. 39-40; Source One at p. 3; Paging Partners Corporation at p. 3; APC at p. 8; and Metrocall at pp. 8-9.

Further, Ameritech agrees with the suggestion of APC that incumbent carriers within the same market area should be able to combine their coverage areas pursuant to a consortium arrangement, for purposes of demonstrating that they meet the exemption benchmark.

### **III. The Record Overwhelmingly Demonstrates that Interference Protection in the 900 MHz Bands Must Not Be Compromised.**

Every commentor addressing the Commission's proposal to adopt new interference and service area calculation methods for the 900 MHz bands vehemently oppose this idea, even if they supported paging auctions. See, e.g., Comments of PCIA at pp. 24-25; PageNet at pp. 11-26; and Airtouch, Inc. at pp. 21-26. More importantly, engineers commenting on the Commission's proposal unanimously agree that the new formulas do not accurately define the service area and interference protection area needed for 900 MHz operations. See, e.g., Comments of CompComm, Inc. at pp. 1-6; Statement of Raymond C. Trott, P.E. (attached to PageNet Comments); Statement of Sean Austin (attached to Comments of the Paging Coalition); Statement of Shahram Hojati, D.Sc. (attached to Comments of Liberty Cellular, Inc.). The analyses performed by these engineers, all of whom have significant experience in engineering paging systems, demonstrate that the proposed formulas will result in an unwarranted reduction of the protected service area of existing licensees, thereby creating a net reduction of service to the public.

As indicated by Ameritech and other commentors, this harmful reduction of interference protection would be arbitrary and capricious, and would not serve the public interest. Moreover, it would violate Section 309(j)(7), since the contour reduction is designed primarily to increase auction revenues. Further, the record reflects that this

rule change may amount to an improper "taking" under the Fifth Amendment of the United States Constitution. See Comments of PageNet at pp. 18-26; Comments of TSR Paging, Inc. at p. 22; March 1, 1996 Interim Licensing Comments of the Paging Coalition at p. 22.

The vast majority of commentators addressing this issue advocate that the Commission retain its current "fixed radius" approach, as embodied in Rule Section 22.537.<sup>6</sup> Since existing systems were planned on the basis of this approach, continuing to afford the same protection to these systems is a fair and logical solution. To the extent that the Commission believes mathematical formulas are needed to determine coverage and interference protection, it appears that the alternative formulas developed by CompComm in its comments more accurately depict the realities of 900 MHz paging operations. Ameritech would support the adoption of the CompComm formulas. Whatever approach is taken, interference protection cannot be reduced from the current level.

#### **IV. If Market Area Licensing Is Used, the "Substantial Service" Buildout Option Should Not Be Adopted.**

Ameritech's Comments (at p. 19) urged that the Commission refrain from adopting its proposal that auction winners could meet their buildout requirement by demonstrating "substantial service" (i.e., service to those areas within the MTA which were not already served by incumbent licensees). The record shows overwhelming support for this position. See, e.g., Comments of PCIA at p. 22; PageNet at p. 33; the Paging Coalition at p. 4; Airtouch at pp. 8-9; Arch Communications Group/Westlink Licensee Corporation at pp. 8-9; ProNet at pp. 8-9. All of these commentators correctly

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<sup>6</sup> See, e.g., Comments of Mobile Telecommunications Technologies, Inc. at pp. 7-9; Priority Communications, Inc. at p. 7; PageMart, Inc. at pp. 2-3; APC at pp. 4-5; and Liberty Cellular, Inc. at pp. 3-6.

point out that the substantial service option would invite competitors and speculators to bid on a market area for improper purposes, with the knowledge that they will be able to easily meet the buildout requirement and thereby hold hostage the ability of the incumbents to expand.

The "substantial service" option may be warranted if the winning bidder is already licensed for the frequency within the market area. If the Commission declines to adopt Ameritech's proposed expansion rights for incumbent licensees, Ameritech supports this exception to the buildout requirement. Without expansion rights, incumbents will be forced to bid on market areas that include a portion of their system coverage, even if they are not the dominant carrier on the channel within the MTA. These bona fide incumbents should not be penalized for protecting their ability to expand and modify their coverage, even if the MTA does not include enough "white space" to meet the buildout requirement.

**V. The Commission Must Adopt Expansion Rights for Incumbent Licensees.**

In its Comments (at pp. 17-18), Ameritech proposed that incumbent licensees be allowed to establish additional sites (1) within 40 miles of their previously authorized facilities, and (2) in areas where it can be demonstrated that the market area winner cannot make practical use of the frequency. A number of commentors agree that, if market area auctions are held, expansion rights for incumbent licensees are vital. See, e.g., Comments of the Paging Coalition at pp. 20-21; Comments of ProNet, Inc. at pp. 12-15 (Incumbents can relocate transmitters if due to reasons beyond their control, and can complete buildout of any BTA which they occupy within the MTA.); Comments of Western Radio Services Company at pp. 3-4 (Allow incumbents to add transmitter sites

which have 50% overlap with existing service area.); Comments of Metrocall at pp. 10-11 (Allow incumbent to establish transmitters within 40 miles of existing sites.); Comments of Huffman Communications, Inc. at p. 4 (Allow incumbent to add transmitters within existing interference contour, even if system is expanded.). PCIA agrees with the Commission that incumbent licensees should be bound by their existing contours, with no opportunity to expand (except on a secondary basis). See Comments of PCIA at p. 20. It is respectfully submitted that the latter position ignores the fact that all paging systems must be accorded a reasonable opportunity to expand in response to the needs of its customers. Preventing all but one licensee (i.e., the auction winner) from implementing necessary expansions works an unnecessary hardship on existing carriers and their customers, and would be arbitrary and capricious under the standards for retroactive rule changes. Accordingly, the Commission should afford incumbents reasonable expansion rights as suggested by Ameritech and others.

**VI. The Commission Should Enforce Parity Between Nationwide Paging Licensees and the Rest of the Industry.**

Various nationwide paging licensees strongly support the Commission's proposal to exempt them from the auction process, even though these entities may support market area auctions for other paging licensees. See, e.g., Comments of PageNet at p. 52; American Paging, Inc. at pp. 2-3; TSR Paging, Inc. at p. 4. In its comments, Ameritech advocated a level playing field between nationwide paging operations and regional operations such as Ameritech's system, but noted that the best solution is to eliminate market area auctions altogether. Ameritech stands by this position. Ideally, market area auctions should not be applied to the paging industry, for the reasons exhaustively discussed in the record. However, if the Commission proceeds with market

area auctions nonetheless, then regulatory parity would dictate that nationwide frequencies (including private carrier paging channels on which carriers have qualified for nationwide exclusivity) should likewise be subjected to the auction process. This would result in the auctioning of overlay licenses for any MTAs where the nationwide carrier does not provide complete coverage. Otherwise, these nationwide licensees would have an unfair competitive advantage in the marketplace.

## **VII. The Record Establishes Consensus on Other Important Issues.**

### **A. There Should Be No Channel Aggregation Restriction.**

The record reflects unanimous agreement that the Commission should not impose a spectrum cap on acquisition of paging channels, especially by incumbent licensees. See, e.g., Comments of PageNet at pp. 37-38; Comments of Metrocall at p. 18; Comments of PCIA at p. 27. The commentors agree that there is adequate spectrum to prevent any significant warehousing, and it is vital that incumbents be allowed to acquire licenses which would expand their existing co-channel operations.

### **B. Existing Licensees Should Be Allowed To Form Consortia.**

The record also reflects unanimous agreement that existing licensees should be allowed to form consortia for bidding purposes. See, e.g., Comments of PCIA at p. 18; Comments of Priority Communications, Inc. at p. 6. These commentors agree that it is important to allow co-channel licensees to form such consortia, so that they can maximize the benefits to their respective customers by joining their systems to create seamless coverage.



**C. A Canadian Clearance Mechanism Is Required.**

Only one commentor seemed to address Ameritech's call for a mechanism whereby incumbent licensees and market area winners can obtain Canadian coordination for sites above Line A, outside of the application process which will apparently be terminated. In its Comments (at pp. 36-37), PageNet agrees that this mechanism is necessary, and advocates that licensees be allowed to negotiate directly with the Canadian and Mexican telecommunications authorities in resolving situations subject to international treaty. Ameritech supports this view, and recommends that the Commission assist with the creation of this process.

**D. Any Auctions Should Be on a Market- and Frequency-Specific Basis.**

Ameritech agrees with commentors such as MobileMedia and Arch Communications Group/Westlink Licensee Corporation that any auctions should be market- and frequency-specific. Ameritech also agrees that a stopping rule should be adopted which closes bidding on each frequency once two rounds pass without new bids. See Comments of MobileMedia at p. 26; Comments of PageNet at p. 3. These rules will help to prevent competitors and speculators from gaming the system. They would also help to prevent auction "gridlock" from applicants who would otherwise specify all frequencies and all markets in their applications (as has been the case in the PCS auctions).

**E. Notice and Testing Procedures.**

Ameritech advocated that market area licensees be required to (1) give incumbent carriers advance notice of the implementation of co-channel transmitters which may affect the existing carrier's operations, and (2) allow the incumbent carrier to engage in reasonable testing before commencing operation. PCIA proposes that the Commission

require incumbent carriers to notify the market area licensee before implementing any internal transmitters within the incumbent's composite interference contour. Comments of PCIA at p. 21. Ameritech does not oppose a requirement to notify the market area licensee of such system modifications, so long as the notification requirement is reciprocal. However, it should not be necessary for the market area licensee to require testing before the incumbent activates such transmitters, since by definition internal sites will not increase the system interference contour. In contrast, the incumbent carrier has a bona fide concern about whether the market area licensee's new transmitters will afford adequate protection to the existing system. Indeed, analysis of such potential interference is the basis for the Commission's current licensing process.

### CONCLUSION

As discussed above, the record in this proceeding confirms that significant modifications to the proposed market area licensing rules are needed to ensure that existing services are not jeopardized. Accordingly, the Commission should revise its proposed licensing scheme in the manner described above.

Respectfully submitted,

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Filed: April 2, 1996

## ATTACHMENT A

### CARRIERS OPPOSING MARKET AREA AUCTIONS:

1. Consolidated Communications Mobile Services, Inc.
2. SMR Systems, Inc.
3. John L. Crump d/b/a ACE Communications (auction smaller areas only where  
unlicensed)
4. Border to Border Communications, Inc.
5. MobileMedia Communications, Inc.
6. Ameritech Mobile Services, Inc.
7. Datafon II, Inc.
8. Zipcall Long Distance, Inc.
9. Pass Word, Inc.
10. Western Radio Services
11. Sunbelt Transmission Corporation
12. Snider Communications Corporation
13. Teletouch Licenses, Inc.
14. Source One Wireless
15. Radiofone, Inc.
16. Paging Partners Corporation
17. A+ Network
18. Metamora Telephone Company, Inc.
19. Karl A. Rinker d/b/a Rinkers Communications
20. Pigeon Telephone Company, Inc.
21. Baker's Electronics and Communications
22. HEI Communications, Inc.
23. Frederick W. Hiort d/b/a B&B Beepers
24. Paging Associates, Inc.
25. Wilkinson County Telephone Company, Inc.
26. Chequamegon Telephone Cooperative, Inc.
27. Benkleman Telephone Company and Wauneta Telephone Company
28. ATS Mobile Telephone, Inc.
29. Porter Communications, Inc.
30. Baldwin Telecom, Inc. and Amery Telephone Company
31. Communications Sales and Services, Inc.
32. Mobilefone Service, Inc.
33. Mashell Connect, Inc.
34. SuperCom, Inc.
35. Ameritel Paging, Inc.
36. Anserphone of Natchez, Inc.
37. CommNet Paging Inc.
38. Metro/Delta, Inc.
39. Oregon Telephone Corporation
40. Paging Systems Management, Inc.
41. Professional Answering Service, Inc.
42. Radio Paging Service
43. RCC Paging, Inc.

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44. Sema-Phoon, Inc.
45. Ventures in Paging L.C.
46. Clifford and Barbara Moeller d/b/a Valley Answering Service
47. Page Hawaii
48. Lubbock Radio Paging Service, Inc.
49. WT Services, Inc. d/b/a Panhandle Paging
50. Mobile Phone of Texas, Inc.
51. Jon D. Word
52. Pioneer Telephone Cooperative, Inc.
53. PagePrompt U.S.A.

**CARRIERS OPPOSING MTA AUCTIONS AND PROPOSING  
OTHER MARKET SIZES:**

1. Metrocall, Inc. (Proposing BTAs)
2. Caraway Communications (Proposing BTAs for Most Frequencies)
3. Huffman Communications (No Auctions for UHF/VHF Bands,  
Economic Areas for 900 MHz)
4. Rule Radiophone Service, Inc. (Proposing BTAs)

**ENTITIES FAVORING MTA AUCTIONS:**

1. AT&T Wireless
2. Diamond Page Partnerships
3. AmericaOne
4. Northwest Pager
5. Metro Paging
6. West Virginia Pager
7. PagerOne
8. A+ Communications, Inc.
9. AirTouch Paging
10. Personal Communications Industry Association
11. TeleBEEPER of New Mexico, Inc.
12. ProNet, Inc.
13. Arch Communications Group
14. Mobile Telecommunication Technologies Corp.
15. Westlink Licensee Corporation
16. Paging Network, Inc.
17. American Paging, Inc.

# United States Senate

WASHINGTON, D.C. 20540

February 9, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Chairman Hundt:

We continue to support your efforts and those of the entire Federal Communications Commission ("Commission" or "FCC") to carry out the intent of Congress that the Commission grant mutually exclusive applications for authorizations in certain radio services on the basis of competitive bidding, as authorized by the Omnibus Budget Reconciliation Act of 1993 ("1993 Budget Act" or "'93 Act").

In granting authority to the FCC to award such authorizations by auction, Congress expressly limited that authority to situations involving mutually exclusive applications. Moreover, Section 117 of the 1993 Budget Act, now codified at 47 U.S.C., section 309(j)(6)(E), directed the Commission to make every effort to avoid mutually exclusive application situations by use, among other things, of engineering solutions such as frequency coordination and amendment to eliminate mutually exclusive situations. The opportunity to generate revenues was not to be used as justification for ignoring this direction.

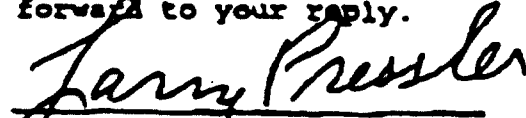
While some segments of the industry have expressed concern about Commission action regarding allocation of specific portions of the electromagnetic spectrum, our concern is with the larger issue of Commission implementation of Congressionally-imposed responsibilities under the '93 Act. We are particularly interested in the Commission's treatment of its auction authority under the Notice of Proposed Rulemaking and Order, FCC 95-500, (the "Order") covering the proposed revision of rules governing processing of 39 GHz applications.

We wholly support spectrum auctions, where reasonable, appropriate and truly representative of Congressional intent. By virtue of either completing the application process or amending already submitted applications to eliminate mutual exclusivity concerns, applicants have in essence established a fairly reasonable expectation that they would not be subjected to the competitive bidding process. In considering the public interest

to generate revenues under the '93 Act, Congress determined that the promotion of more competitive services for the public and more efficient use of spectrum were of paramount importance when compared to allocation by competitive bidding.

It therefore seems anomalous to the clearly expressed intent of Congress within the Act that applicants who have completed the application process would subsequently be exposed to having to compete for that spectrum in auctions. Clarification of the Commission's reasoning and interpretation of it's auction authority under the 1993 Budget Act would be appreciated.

Thank you for your prompt attention in this matter. We look forward to your reply.

  
Larry Pressler

  
Thomas Paschle

## **SERVICE LIST**

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Commissioner James Quello\*  
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